

AMENDED IN SENATE SEPTEMBER 7, 1999

AMENDED IN ASSEMBLY MAY 24, 1999

AMENDED IN ASSEMBLY APRIL 27, 1999

AMENDED IN ASSEMBLY APRIL 6, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 1309

Introduced by Assembly Member Scott
(Coauthor: Senator Speier)

February 26, 1999

~~An act to amend Section 1063.1 of the Insurance Code, and to amend Section 3702.8 of the Labor Code, relating to workers' compensation. An act to amend Sections 2870 and 2871 of the Civil Code, to amend Section 1063.1 of, and to add Section 1872.91 to, the Insurance Code, and to amend Section 3702.8 of the Labor Code, relating to insurance.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1309, as amended, Scott. ~~Workers' compensation insurance; self-insurers~~ *Insurance.*

(1) Existing law requires employers that elect to be self-insured for workers' compensation liabilities to obtain a certificate of consent to self-insure from the Director of Industrial Relations, as specified. Existing law also requires private employers that cease to be self-insured to discharge their continuing obligations to secure the payment of workers' compensation that accrued during the period of

self-insurance by complying with various procedures, including the deposit and maintenance of a security deposit with the director for accrued liability. Under these provisions, an employer that ceases to be self-insured may alternatively discharge this obligation by purchasing a special excess workers' compensation insurance policy, and an employer that does so must maintain the required security deposit for a period of 3 years after the policy is issued, unless the insurer issuing the policy posts a financial guarantee bond with the director.

This bill would provide that certain of the provisions relating to an employer that ceases to be a self-insured employer also apply to public employers. It would provide that any employer, who is currently self-insured or who has ceased to be self-insured, may choose to discharge, without recourse or liability to the Self-Insurers Security Fund, its continuing obligations as a self-insurer, by purchasing a special excess workers' compensation insurance policy, in accordance with existing provisions of law regarding the transfer of liability to insurers and subject to certain approvals and rate ~~publication~~ *filing* requirements, as specified. The bill would provide that the provisions relating to the security deposit only apply to private self-insured employers. The bill would also delete provisions relating to the issuance of a financial guarantee bond and instead provide that in order for the special excess *workers' compensation* policy to discharge the obligation of a private employer to maintain a security deposit with the director, the policy shall provide coverage for all claims arising out of that liability for the applicable period, and to the extent the policy does not provide coverage for all claims, the employer shall maintain with the director the required *security* deposit for a period of 3 years after the issuance date of the policy. This bill would require the director to adopt regulations reasonably necessary to implement these provisions.

~~The bill would become operative only if SB 320 is also enacted.~~

(2) Existing law prohibits insurers from engaging in unfair claims settlement practices, and provides for sanctions against insurers who engage in unfair claims settlement practices



with respect to coverage under a policy of liability insurance by means of administrative sanctions against the insurer. SB 1237 of the 1999–2000 Regular Session, the Fair Insurance Responsibility Act of 2000 or “FAIR,” would provide that an insurer shall act in good faith toward and deal fairly with 3rd-party claimants. It would provide that if an insurer engages in unfair claims settlement practices with respect to a 3rd-party claimant, the 3rd-party claimant would generally have the right, upon meeting certain conditions, to assert a cause of action against the insurer, except as specified. It would permit binding arbitration for specified personal injury claims.

This bill would make changes to the provisions of SB 1237 if SB 1237 becomes operative. Among those changes would be the elimination of the use of verdict amounts as evidence of insurer bad faith; restricting 3rd-party bad faith actions to individuals for bodily injury, as defined, wrongful death, or property damage resulting from an incident involving a motor vehicle; providing for a defense, as specified; limiting the prospective effect of that bill’s new 3rd-party rights as to prior accidents, events, occurrences, or losses; and revising the presumption regarding insurer good faith and fair dealing arising from the submission of relevant claims to arbitration.

The bill would require the State Auditor to study the effects of FAIR, and to deliver his or her report to the Governor and the Legislature on or before January 1, 2005.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds that public
2 employers are liable for the payment of workers’
3 compensation benefits in substantial amounts. These
4 amounts are owed to current or former county employees
5 who have previously been injured on the job, and to
6 others in accordance with applicable law. The Legislature
7 finds that new liabilities are created every year, as
8 additional persons become eligible for workers’
9 compensation benefits.

1 SEC. 2. *Section 2870 of the Civil Code, as added by*
2 *Senate Bill 1237 of the 1999–2000 Regular Session, is*
3 *amended to read:*

4 2870. (a) For purposes of this title, the following
5 definitions shall apply:

6 (1) “Third-party claimant” or “claimant” shall mean
7 each ~~person~~ *individual* seeking recovery ~~of benefits~~
8 against an insured under a liability insurance policy or a
9 self-funded liability protection program, fund, or plan,
10 ~~whether for personal bodily injury or; wrongful death; or~~
11 ~~other economic loss, or both~~ *property damage resulting*
12 *from an incident involving a motor vehicle;* including,
13 without limitation, damages resulting from loss of
14 consortium or loss of care, comfort, society and the like
15 resulting from wrongful death.

16 (2) “Insured” shall mean a *natural* person or entity
17 named as an insured in a liability insurance policy or a
18 private self-funded liability protection program, fund, or
19 plan; a *natural* person or entity who is identified as an
20 additional insured under a liability insurance policy or a
21 private self-funded liability protection program, fund, or
22 plan; a *natural* person or entity who is an additional
23 insured under the definitions of insured persons set forth
24 in a liability insurance policy or a private self-funded
25 liability protection program, fund, or plan; a *natural*
26 person or entity who is defined, by law, as an insured
27 under a liability insurance policy or a private self-funded
28 liability protection program, fund, or plan; or cooperative
29 corporations or interindemnity arrangements provided
30 for under Section 1280.7 of the Insurance Code.

31 (3) “Insurer” shall ~~include~~ *mean* any ~~liability~~ insurer
32 licensed pursuant to, or subject to regulation under, the
33 Insurance Code ~~who which~~ provides liability ~~coverage~~
34 *insurance* to an insured against whom ~~the~~ *a* third-party
35 claimant makes a claim for ~~personal bodily injury,~~
36 ~~wrongful death, or other economic loss, or for property~~
37 *damage resulting from an incident involving a motor*
38 *vehicle,* and the third-party administrator of any private
39 self-funded liability protection program, fund, or plan; or
40 cooperative corporations or interindemnity

1 arrangements provided for under Section 1280.7 of the
2 Insurance Code. However, “insurer” does not include the
3 self-funded liability protection program, fund, or plan,
4 itself, an insurer named as the insurer under a policy of
5 workers’ compensation insurance, nor a self-insured
6 public entity, a private administrator for a public entity,
7 or a public entity insured by a private insurer or carrier.
8 For purposes of this section, “public entity” has the
9 meaning set forth in Section 811.2 of the Government
10 Code.

11 (4) “*Liability insurance*” shall mean that portion of a
12 personal or commercial insurance policy or a private
13 self-funded liability protection program, fund or plan,
14 which provides liability coverage for bodily injury, or for
15 property damage resulting from an incident involving a
16 motor vehicle.

17 (5) “*Bodily injury*” shall mean actual physical injury,
18 sickness, or disease sustained by a person, including death
19 therefrom. “*Bodily injury*” shall not mean (a) emotional
20 distress, of any kind, resulting from economic loss, or (b)
21 emotional distress resulting from a cause other than
22 economic loss unless accompanied by actual physical
23 manifestations of such emotional distress.

24 SEC. 3. Section 2871 of the Civil Code, as added by
25 Senate Bill 1237 of the 1999–2000 Regular Session, is
26 amended to read:

27 2871. (a) (1) Every insurer, as defined in paragraph
28 (3) of subdivision (a) of Section 2870, doing business in
29 the State of California shall act in good faith toward and
30 deal fairly with third-party claimants. A third-party
31 claimant may bring an action against an insurer doing
32 business in the State of California to recover damages,
33 including general, special, and exemplary damages, for
34 commission of any unfair claims settlement practice
35 specified in paragraph (1), (2), (3), (5), (8), (9), (10),
36 (11), (12), (13), (14), or (15) of subdivision (h) of Section
37 790.03 of the Insurance Code as it relates to a third-party
38 claimant.

39 (2) (A) In considering a third-party claim an insurer
40 shall make an honest, intelligent and knowledgeable

1 *evaluation of the claim on its merits. However, an insurer*
2 *shall not be considered to have violated its obligation to*
3 *act in good faith and deal fairly with a third-party*
4 *claimant because of the insurer's honest mistake in*
5 *judgment in connection with the settlement of a claim.*

6 (B) *The fact that an insurer did not settle a claim is not*
7 *necessarily proof of bad faith.*

8 (b) A third-party claimant shall not be entitled to
9 assert the remedies set forth in subdivision (a) unless the
10 third-party claimant (1) obtains in the underlying action
11 a final judgment after trial, a judgment after default, or
12 an arbitration award arising from a contractual
13 predispute binding arbitration clause or agreement, and
14 (2) the third-party claimant makes a written demand by
15 certified mail to settle the claim in the underlying action,
16 and the claimant's judgment or arbitration award in that
17 prior proceeding exceeded the amount of the final
18 written demand on all claims by the third-party claimant
19 made before the trial, entry of default or arbitration listed
20 above. ~~A The final written demand sent by certified mail~~
21 ~~may not exceed the applicable policy limits and shall be~~
22 ~~deemed rejected if not responded to within 30 days of~~
23 ~~receipt of the final written demand. Subject to~~
24 ~~subdivision (h) of Section 790.03 of the Insurance Code,~~
25 ~~the verdict's amount may be considered as evidence of~~
26 ~~bad faith, but shall not be the sole consideration.~~

27 (c) The remedies set forth in this title shall apply to
28 any insurer who violates the standards set forth in
29 subdivision (a) in its handling, processing, or settlement
30 of the claims made by a third-party claimant under the
31 insured's insurance protection.

32 (d) A professional liability insurer *for medical, health*
33 *care, or legal malpractice* is not liable under this title if ~~all~~
34 *both of the following conditions apply:*

35 (1) The consent of the policyholder to settlement is a
36 prerequisite to settlement ~~under the terms of the~~
37 ~~insurance policy or by statute.~~

38 (2) ~~The insurance company has assessed the case~~
39 ~~against the policyholder as to potential liability and~~

1 ~~damages known at that time and has fully informed the~~
2 ~~policyholder of that assessment.~~

3 ~~(3) The policyholder's refusal to consent is not based~~
4 ~~on intentionally erroneous or misleading information~~
5 ~~provided by the insurer.~~

6 *(2) The policyholder withholds consent to settlement.*

7 (e) A person injured in an accident arising out of the
8 operation or use of a motor vehicle, who at the time of the
9 accident was operating a motor vehicle in violation of
10 Section 23152 or 23153 of the Vehicle Code, and was
11 convicted of that offense, may not assert a cause of action
12 under this section.

13 (f) Any time period within which an action must be
14 commenced pursuant to any applicable statute of
15 limitations shall not begin until the underlying claim has
16 been resolved through a final judgment. In the event of
17 an appeal by either party, resolution of the appeal shall be
18 a prerequisite to a claim under this title.

19 (g) Nothing in this title shall abrogate or limit any
20 theory of liability or remedy otherwise available at law
21 including, but not limited to, tort remedies for the breach
22 of implied covenant and fair dealing or any theory of
23 liability or remedy based on *Comunale v. Traders &*
24 *General Ins. Co.* (1958) 50 Cal.2d 654 or *Crisci v. Security*
25 *Ins. Co.* (1967) 66 Cal.2d 425. ~~Nothing in this section shall~~
26 ~~relieve an insurer of its obligation of good faith and fair~~
27 ~~dealing to its own insured. However, the insurer cannot~~
28 ~~wrongfully use its obligation to its own insured to violate~~
29 ~~its duties under his section.~~

30 ~~(h) The provisions of this title shall apply,~~
31 ~~prospectively, to events or accidents covered by the~~
32 ~~applicable insurance policy that occur on or after January~~
33 ~~1, 2000. The provisions of this title are prospective and are~~
34 ~~only applicable as follows:~~

35 *(1) To accidents, events, occurrences, or losses that*
36 *occur on or after January 1, 2000.*

37 *(2) To conduct by any insurer, its agents or employees*
38 *concerning accidents, events, occurrences, or losses that*
39 *occur on or after January 1, 2000.*

1 *SEC. 4. Section 1778 of the Code of Civil Procedure,*
2 *as added by Senate Bill 1237 of the 1999–2000 Regular*
3 *Session, is amended to read:*

4 1778. If the insurer *requests or* agrees to submit a
5 claim to arbitration under Section 1777 the insurer shall
6 be conclusively presumed to have complied with the
7 duties under subdivision (a) of Section 2871 of the Civil
8 Code.

9 *SEC. 5. Section 1063.1 of the Insurance Code is*
10 *amended to read:*

11 1063.1. As used in this article:

12 (a) “Member insurer” means an insurer required to be
13 a member of the association in accordance with
14 subdivision (a) of Section 1063, except and to the extent
15 that the insurer is participating in an insolvency program
16 adopted by the United States government.

17 (b) “Insolvent insurer” means a member insurer
18 against which an order of liquidation or receivership with
19 a finding of insolvency has been entered by a court of
20 competent jurisdiction.

21 (c) (1) “Covered claims” means the obligations of an
22 insolvent insurer, including the obligation for unearned
23 premiums, (i) imposed by law and within the coverage
24 of an insurance policy of the insolvent insurer; (ii) which
25 were unpaid by the insolvent insurer; (iii) which are
26 presented as a claim to the liquidator in this state or to the
27 association on or before the last date fixed for the filing of
28 claims in the domiciliary liquidating proceedings; (iv)
29 which were incurred prior to the date coverage under the
30 policy terminated and prior to, on, or within 30 days after
31 the date the liquidator was appointed; (v) for which the
32 assets of the insolvent insurer are insufficient to discharge
33 in full; (vi) in the case of a policy of workers’
34 compensation insurance, to provide workers’
35 compensation benefits under the workers’ compensation
36 law of this state; and (vii) in the case of other classes of
37 insurance if the claimant or insured is a resident of this
38 state at the time of the insured occurrence, or the
39 property from which the claim arises is permanently
40 located in this state.

1 (2) "Covered claims" also include the obligations
2 assumed by an assuming insurer from a ceding insurer
3 where the assuming insurer subsequently becomes an
4 insolvent insurer if, at the time of the insolvency of the
5 assuming insurer, the ceding insurer is no longer
6 admitted to transact business in this state. Both the
7 assuming insurer and the ceding insurer shall have been
8 member insurers at the time the assumption was made.
9 "Covered claims" under this paragraph shall be required
10 to satisfy the requirements of subparagraphs (i) to (vii),
11 inclusive, of paragraph (1), except for the requirement
12 that the claims be against policies of the insolvent insurer.
13 The association shall have a right to recover any deposit,
14 bond, or other assets that may have been required to be
15 posted by the ceding company to the extent of covered
16 claim payments and shall be subrogated to any rights the
17 policyholders may have against the ceding insurer.

18 (3) "Covered claims" does not include obligations
19 arising from the following:

20 (i) Life, annuity, health, or disability insurance.

21 (ii) Mortgage guaranty, financial guaranty, or other
22 forms of insurance offering protection against investment
23 risks.

24 (iii) Fidelity or surety insurance including fidelity or
25 surety bonds, or any other bonding obligations.

26 (iv) Credit insurance.

27 (v) Title insurance.

28 (vi) Ocean marine insurance or ocean marine
29 coverage under any insurance policy including claims
30 arising from the following: the Jones Act (46 U.S.C.A. Sec.
31 688), the Longshore and Harbor Workers' Compensation
32 Act (33 U.S.C.A. Sec. 901 et seq.), or any other similar
33 federal statutory enactment, or any endorsement or
34 policy affording protection and indemnity coverage.

35 (vii) Any claims servicing agreement or insurance
36 policy providing retroactive insurance of a known loss or
37 losses, except a special excess workers' compensation
38 policy issued pursuant to subdivision (c) of Section 3702.8
39 of the Labor Code that covers all or any part of workers'
40 compensation liabilities of an employer that is issued, or

1 was previously issued, a certificate of consent to
2 self-insure pursuant to subdivision (b) of Section 3700 of
3 the Labor Code.

4 (4) “Covered claims” does not include any obligations
5 of the insolvent insurer arising out of any reinsurance
6 contracts, nor any obligations incurred after the
7 expiration date of the insurance policy or after the
8 insurance policy has been replaced by the insured or
9 canceled at the insured’s request, or after the insurance
10 policy has been canceled by the association as provided
11 in this chapter, or after the insurance policy has been
12 canceled by the liquidator, nor any obligations to any
13 state or to the federal government.

14 (5) “Covered claims” does not include any obligations
15 to insurers, insurance pools, or underwriting associations,
16 nor their claims for contribution, indemnity, or
17 subrogation, equitable or otherwise, except as otherwise
18 provided in this chapter.

19 An insurer, insurance pool, or underwriting association
20 may not maintain, in its own name or in the name of its
21 insured, any claim or legal action against the insured of
22 the insolvent insurer for contribution, indemnity or by
23 way of subrogation, except insofar as, and to the extent
24 only, that the claim exceeds the policy limits of the
25 insolvent insurer’s policy. In those claims or legal actions,
26 the insured of the insolvent insurer is entitled to a credit
27 or setoff in the amount of the policy limits of the insolvent
28 insurer’s policy, or in the amount of the limits remaining,
29 where those limits have been diminished by the payment
30 of other claims.

31 (6) “Covered claims,” except in cases involving a
32 claim for workers’ compensation benefits or for unearned
33 premiums, does not include any claim in an amount of
34 one hundred dollars (\$100) or less, nor that portion of any
35 claim that is in excess of any applicable limits provided in
36 the insurance policy issued by the insolvent insurer.

37 (7) “Covered claims” does not include that portion of
38 any claim, other than a claim for workers’ compensation
39 benefits, that is in excess of five hundred thousand dollars
40 (\$500,000).

(8) “Covered claims” does not include any amount awarded as punitive or exemplary damages.

(9) “Covered claims” does not include (i) any claim to the extent it is covered by any other insurance of a class covered by this article available to the claimant or insured nor (ii) any claim by any person other than the original claimant under the insurance policy in his or her own name, his or her assignee as the person entitled thereto under a premium finance agreement as defined in Section 673 and entered into prior to insolvency, his or her executor, administrator, guardian or other personal representative or trustee in bankruptcy and does not include any claim asserted by an assignee or one claiming by right of subrogation, except as otherwise provided in this chapter.

(10) “Covered claims” does not include any obligations arising out of the issuance of an insurance policy written by the separate division of the State Compensation Insurance Fund pursuant to Sections 11802 and 11803.

(11) “Covered claims” does not include any obligations of the insolvent insurer arising from any policy or contract of insurance issued or renewed prior to the insolvent insurer’s admission to transact insurance in the State of California.

(12) “Covered claims” does not include surplus deposits of subscribers as defined in Section 1374.1.

(d) “Admitted to transact insurance in this state” means an insurer possessing a valid certificate of authority issued by the department.

(e) “Affiliate” means a person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with an insolvent insurer on December 31 of the year next preceding the date the insurer becomes an insolvent insurer.

(f) “Control” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than

1 a commercial contract for goods or nonmanagement
2 services, or otherwise, unless the power is the result of an
3 official position with or corporate office held by the
4 person. Control is presumed to exist if any person,
5 directly or indirectly, owns, controls, holds with the
6 power to vote, or holds proxies representing, 10 percent
7 or more of the voting securities of any other person. This
8 presumption may be rebutted by showing that control
9 does not in fact exist.

10 (g) “Claimant” means any insured making a first party
11 claim or any person instituting a liability claim; provided
12 that no person who is an affiliate of the insolvent insurer
13 may be a claimant.

14 (h) “Ocean marine insurance” includes marine
15 insurance as defined in Section 103, except for inland
16 marine insurance, as well as any other form of insurance,
17 regardless of the name, label, or marketing designation of
18 the insurance policy, that insures against maritime perils
19 or risks and other related perils or risks, which are usually
20 insured against by traditional marine insurance such as
21 hull and machinery, marine builders’ risks, and marine
22 protection and indemnity. Those perils and risks insured
23 against include, without limitation, loss, damage, or
24 expense or legal liability of the insured arising out of or
25 incident to ownership, operation, chartering,
26 maintenance, use, repair, or construction of any vessel,
27 craft or instrumentality in use in ocean or inland
28 waterways, including liability of the insured for personal
29 injury, illness, or death for loss or damage to the property
30 of the insured or another person.

31 (i) “Unearned premium” means that portion of a
32 premium that had not been earned because of the
33 cancellation of the insolvent insurer’s policy and is that
34 premium remaining for the unexpired term of the
35 insolvent insurer’s policy. “Unearned premium” does not
36 include any amount sought as return of a premium under
37 any policy providing retroactive insurance of a known
38 loss or return of a premium under any retrospectively
39 rated policy or a policy subject to a contingent surcharge
40 or any policy in which the final determination of the



1 premium cost is computed after expiration of the policy
2 and is calculated on the basis of actual loss experience
3 during the policy period.

4 ~~SEC. 3.~~

5 *SEC. 6. Section 1872.91 is added to the Insurance*
6 *Code, to read:*

7 *1872.91. (a) The State Auditor shall prepare a report*
8 *analyzing and evaluating the effect of the Fair Insurance*
9 *Responsibility Act of 2000 (FAIR) on California insurance*
10 *claims practices and rates. The report shall identify*
11 *changes in claim practices and patterns caused by the*
12 *enactment of FAIR. The report shall be delivered to the*
13 *Governor and the Legislature on or before January 1,*
14 *2005. The report shall be funded from existing resources*
15 *of the State Auditor. The report shall include, but not be*
16 *limited to, an analysis of the following:*

17 *(1) The number of complaints to the Department of*
18 *Insurance regarding unfair claims settlement practices.*

19 *(2) The number and type of actions taken by the*
20 *Department of Insurance in response to those*
21 *complaints.*

22 *(3) The number of cases in which the parties enter into*
23 *voluntary binding arbitration under Title 11.65*
24 *(commencing with Section 1776) of Part 3 of the Code of*
25 *Civil Procedure, and the disposition of those cases,*
26 *including whether the use of retired judges as arbitrators*
27 *has provided an adequate pool of arbitrators.*

28 *(4) The number of cases that proceed to trial and the*
29 *disposition of these cases, including appeals.*

30 *(5) The number of actions filed under Title 13.7*
31 *(commencing with Section 2870) of Part 4 of Division 3*
32 *of the Civil Code, and the disposition of these cases,*
33 *including appeals.*

34 *(6) An analysis of the disposition of cases of third-party*
35 *claimants who are not eligible to file a bad faith action and*
36 *whether these claimants have been subject to unfair*
37 *claims settlement practices.*

38 *(b) As part of the study, the State Auditor shall*
39 *conduct a statistical closed claim study to compare auto*
40 *insurance claims closed in 1999 and 2003. The study shall*

1 provide at least the same kinds of information as the
2 August 1990 study, "Automobile Claims, A study of Closed
3 Claim Payments Patterns in California," prepared by the
4 Statistical Analysis Bureau. The Insurance Commissioner
5 shall cooperate with the State Auditor in this study, and
6 shall provide information requested by the State Auditor.
7 The study shall identify the component costs of claims,
8 including, but not limited to, the items listed in
9 subdivision (c) by coverage for major settlement
10 methods, including each of the following:

- 11 (1) Closed without payment, no litigation.
- 12 (2) Closed with payment, no litigation.
- 13 (3) Closed without payment, litigated.
- 14 (4) Closed with payment after mediation.
- 15 (5) Closed with payment after judicial arbitration.
- 16 (6) Closed with payment after voluntary binding
17 arbitration.

18 (7) Closed with payment after trial, including appeals.
19 (c) The part of the study required in subdivision (b)
20 shall include the following items, shown separately by
21 coverage:

- 22 (1) Number of claims.
- 23 (2) Amount of losses or claim payouts, including both
24 economic damages shown separately by category and
25 noneconomic damages.
- 26 (3) Punitive damages or bad faith awards, when
27 applicable.
- 28 (4) Defense costs.
- 29 (5) Other claim or loss adjustment expenses.
- 30 (6) Time period between filing of claim and final
31 settlement.

32 SEC. 7. Section 3702.8 of the Labor Code is amended
33 to read:

34 3702.8. (a) Employers who have ceased to be
35 self-insured employers shall discharge their continuing
36 obligations to secure the payment of workers'
37 compensation that accrued during the period of
38 self-insurance, for purposes of Sections 3700, 3700.5, 3706,
39 and 3715, and shall comply with all of the following
40 obligations of current certificate holders:

1 (1) Filing annual reports as deemed necessary by the
2 director to carry out the requirements of this chapter.

3 (2) In the case of a private employer, depositing and
4 maintaining a security deposit for accrued liability for the
5 payment of any workers' compensation that may become
6 due, pursuant to subdivision (b) of Section 3700 and
7 Section 3701, except as provided in subdivision (c).

8 (3) Paying within 30 days all assessments of which
9 notice is sent, pursuant to subdivision (b) of Section 3745,
10 within 36 months from the last day the employer's
11 certificate of self-insurance was in effect. Assessments
12 shall be based on the benefits paid by the employer
13 during the last full calendar year of self-insurance on
14 claims incurred during that year.

15 (b) In addition to proceedings to establish liabilities
16 and penalties otherwise provided, a failure to comply
17 may be the subject of a proceeding before the director.
18 An appeal from the director's determination shall be
19 taken to the appropriate superior court by petition for
20 writ of mandate.

21 (c) Notwithstanding subdivision (a), any employer
22 who is currently self-insured or who has ceased to be
23 self-insured may purchase a special excess workers'
24 compensation policy to discharge any or all of the
25 employer's continuing obligations as a self-insurer to pay
26 compensation or to secure the payment of compensation.

27 (1) The special excess workers' compensation
28 insurance policy shall be issued by an insurer authorized
29 to transact workers' compensation insurance in this state.

30 (2) Each carrier's special excess workers'
31 compensation policy shall be approved as to form and
32 substance by the Insurance Commissioner, and rates for
33 special excess workers' compensation insurance shall be
34 subject to the filing requirements set forth in Section
35 11735 of the Insurance Code.

36 (3) Each special excess workers' compensation
37 insurance policy shall be submitted by the employer to
38 the director. The director shall adopt and publish
39 minimum insurer financial rating standards for

1 companies issuing special excess workers' compensation
2 policies.

3 (4) Upon acceptance by the director, a special excess
4 workers' compensation policy shall provide coverage for
5 all or any portion of the purchasing employer's claims for
6 compensation arising out of injuries occurring during the
7 period the employer was self-insured in accordance with
8 Sections 3755, 3756, and 3757 of the Labor Code and
9 Sections 11651 and 11654 of the Insurance Code. The
10 director's acceptance shall discharge the Self-Insurer's
11 Security Fund, without recourse or liability to the
12 Self-Insurer's Security Fund, of any continuing liability
13 for the claims covered by the special excess workers'
14 compensation insurance policy.

15 (5) For public employers, no security deposit or
16 financial guarantee bond or other security shall be
17 required. The director shall set minimum financial rating
18 standards for insurers issuing special excess workers'
19 compensation policies for public employers.

20 (d) (1) In order for the special excess workers'
21 compensation insurance policy to discharge the full
22 obligations of a private employer to maintain a security
23 deposit with the director for the payment of self-insured
24 claims, applicable to the period to be covered by the
25 policy, the special excess policy shall provide coverage for
26 all claims for compensation arising out of that liability.
27 The employer shall maintain the required deposit for the
28 period covered by the policy with the director for a
29 period of three years after the issuance date of the special
30 excess policy.

31 (2) If the special workers' compensation insurance
32 policy does not provide coverage for all of the continuing
33 obligations for which the private self-insured employer is
34 liable, to the extent the employer's obligations are not
35 covered by the policy a private employer shall maintain
36 the required deposit with the director. In addition, the
37 employer shall maintain with the director the required
38 deposit for the period covered by the policy for a period
39 of three years after the issuance date of the special excess
40 policy.

(e) The director shall adopt regulations pursuant to Section 3702.10 that are reasonably necessary to implement this section in order to reasonably protect injured workers, employers, the Self-Insurers' Security Fund, and the California Insurance Guarantee Association.

(f) The posting of a special excess workers' compensation insurance policy with the director shall discharge the obligation of the Self-Insurer's Security Fund pursuant to Section 3744 to pay claims in the event of an insolvency of a private employer to the extent of coverage of compensation liabilities under the special excess workers' compensation insurance policy. The California Insurance Guarantee Association shall be advised by the director whenever a special excess workers' compensation insurance policy is posted.

~~SEC. 4. This act shall become operative only if Senate Bill 320 is also enacted and becomes effective on or before January 1, 2000.~~

SEC. 8. The provisions of Sections 2, 3, and 5 of this act, the provisions of Title 13.7 (commencing with Section 2870) of Part 4 of Division 3 of the Civil Code, and the provisions of Title 11.65 (commencing with Section 1776) of Part 3 of the Code of Civil Procedure, are severable. If any of those provisions or any of their applications is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 9. Sections 2, 3, 5, and 7 of this act shall not become operative unless Senate Bill 1237 of the 1999–2000 Regular Session is enacted, becomes operative, and this act is chaptered after Senate Bill 1237.

CORRECTIONS

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